

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

DAMIAN GALVON HERNANDEZ, )  
Plaintiff, )  
v. ) Case No. CIV-22-578-J  
ASSISTANT U.S. ATTORNEY'S )  
OFFICE, et al., )  
Defendants. )

## **ORDER**

Plaintiff entered a guilty plea to a one-count Indictment on June 3, 2021 and is currently awaiting sentencing. *See United States v. Damian Hernandez-Galvan*, CR-21-32-D (W.D. Okla.). On July 22, 2022, Plaintiff filed the current action under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) challenging his detainment. [Doc. No. 1]. The matter was referred for initial proceedings to United States Magistrate Judge Gary M. Purcell consistent with 28 U.S.C. § 626(b)(1)(B), (C) and on review, Judge Purcell construed the *Bivens* action as a petition for writ of habeas corpus under 28 U.S.C. § 2255 and recommended that it be dismissed as premature. [Doc. No. 5]. Despite being cautioned that he must file any objection no later than August 3, 2022, *see id.*, Plaintiff did not object and has waived his right to appellate review of the factual and legal issues addressed in the Report and Recommendation. *See Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

Accordingly, the Court ADOPTS Judge Purcell's Report and Recommendation [Doc. No. 5] and DISMISSES Plaintiff's action without prejudice.

The Court must issue or deny a certificate of appealability (COA) when it enters a final order adverse to a plaintiff or petitioner. A COA may issue only if the plaintiff/petitioner “has

made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “A [plaintiff/]petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Plaintiff has failed to make either showing and the Court denies the COA.

A separate judgment shall be entered.

IT IS SO ORDERED this 22<sup>nd</sup> day of August, 2022.



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BERNARD M. JONES  
UNITED STATES DISTRICT JUDGE